

## REMARKS

Claims 1-8 remain pending in this application.

Claims 1, 2, 4, 5 and 8 are rejected under 35 USC 103(a) on Niederer (US 4,359,785).

Claims 3, 6 and 7 are rejected under 35 USC 103(a) on Niederer in view of Tanamal (US 5,755,811). These rejections are respectfully traversed.

Claim 1 recites a hip prosthesis having a shaft and a femoral neck. The shaft has a proximal part to be inserted in a metaphyseal region of the femur. The proximal part has fins that project from its front and rear faces. The fins have a steep medial flank. The width of the fins increases from the distal end to the proximal end of the proximal part. The height of the fins decreases in a lateral direction, perpendicular to the longitudinal axis of the shaft, from the medial edge. The steep medial flank encloses an angle between 5° and 15° with respect to a longitudinal axis of the shaft. This combination of features is neither taught nor suggested by the cited references.

The Examiner relies on Niederer as teaching the invention of claim 1 but for the steep medial flank enclosing an angle between 5° and 15° with respect to a longitudinal axis of the shaft, for which the Examiner refers to being an obvious matter of design choice. Applicant respectfully disagrees. Because the teachings of Niederer are contrary to and teach away from the claimed angle range, the claimed angle range cannot be considered an obvious matter of design choice.

In particular, Niederer teaches that collar-like projection 12, which the Examiner equates with the claimed medial flank, extends "at least approximately in the direction of the neck 6." Niederer, col. 2, lines 65-66 (emphasis added). This is because "projection 12 is a prolongation of the lower edge 8 of the neck 6." Id. at col. 3, lines 1-2. Niederer also teaches that the collar is aligned in this direction to "prevent[] the shank from sinking into the bone cement." Id. at col. 1, lines 37-38. In order to prevent the shank from sinking into the bone cement, collar 12 cannot be aligned closely to longitudinal axis 3 of shank 2.

In contrast, the claims require a steep medial flank enclosing an angle between 5° and 15° with respect to a longitudinal axis of a shaft. This claimed angle of between 5° and 15° is substantially different than Niederer's disclosed angle of 50°. Further, Niederer teaches away from an angle, such as between 5° and 15°, that is closely aligned to longitudinal axis 3 of shank 2 because such an angle, according to the teachings of Niederer, would necessitate neck 6 extending in an almost vertical direction and fail to prevent shank 2 from sinking into the bone cement, rendering the prosthesis of Niederer unsatisfactory for its intended purpose.

In response to the Examiner's statement that "Neiderer [sic] does not disclose an angle of about 50 degrees, as drawings are considered to be exemplary only; the specific angle of the angled fin is not disclosed in Neiderer [sic]," Applicant respectfully submits that the angle disclosed in FIG. 3 of Niederer is about 50° as shown above. Further, the lack of a specific recitation of an angle in the specification of Niederer cannot be taken as the disclosure of a substantially smaller angle than is shown in the drawings. The question is not what angle Niederer discloses; rather, it is whether Niederer would have reasonably suggested to a person of ordinary skill in the art the use of a much smaller angle than what Niederer's drawing shows. As explained above, Niederer would not have reasonably suggested to a person of ordinary skill in the art the use of the claimed angle since it is contrary to the teachings of Niederer.

The Examiner further states:

One of ordinary skill would consider a smaller angle of 5-15 degrees, if for example, the amount of bone available for anchoring was decreased due to revision surgery, or for example to accommodate a smaller prosthesis.

Applicant respectfully disagrees. The Examiner's statement amounts to an improper conclusory assertion because it fails to take into account, and is contrary to, the explicit teachings of Niederer as explained above and is not based on evidence.

Accordingly, because Niederer does not disclose, teach or suggest all of the limitations of claim 1, the rejection of claim 1 (and claims 2-8, which depend from claim 1) under 35 U.S.C. § 103(a) on Niederer should be withdrawn. The deficiencies of Niederer are not compensated for by Tanamal for at least the reasons described above.

In view of the above, early action allowing claims 1-8 is solicited.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in

connection with the filing of this document to Deposit Account No. 03-1952 referencing Docket No. 246472007600.

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